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May 23, 1983

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Mr. Laurence A. Blood, Chief
Estate and Legacy Section
Audit Division
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Re: Application of RSA 86:6, II(b) to Remarried
Surviving Spouse of Decedent's Child

Dear Mr. Blood:

This is in response to your memorandum of May 2, 1983, in which you requested advice concerning the application of RSA 86:6, II(b) to the remarried surviving spouse of a decedent's child. The relevant language of this statute authorizes an exemption from inheritance taxation for spouses of the decedent's lineal descendants and lineal ascendants. It is my opinion that this exemption is not applicable to a bequest to a remarried surviving spouse of the decedent's child.

Although this issue has not been decided by New Hampshire courts, the general rule appears to be that remarriage after death of the first spouse has the effect of terminating the surviving spouse's spousal relationship with the first husband or wife. Thus, the wife of a deceased husband relinquishes her status as her first husband's widow upon her remarriage, especially in view of statutes which exempt a portion of a deceased husband's property from alienation to other heirs. See Annotation: "Remarriage as Affecting One's Status as a Widow or Widower for Purposes of Statute of Descent and Distribution or Other Statute Applying Such Term," 72 A.L.R. 1324, 1327. Remarriage of a surviving husband also generally has the effect



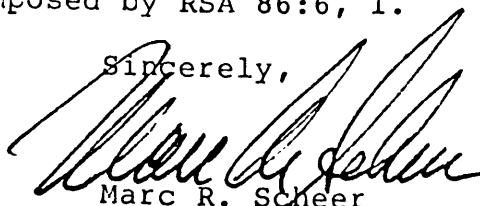
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of denying him the preferred tax treatment allowed as the spouse of the decedent's daughter. See Annotation: "Surviving Husband or Wife of Child Who Died Before Decedent as Husband or Wife Within Succession Tax Law Provisions as to Rates or Exemptions," 81 A.L.R.2d 1230, 1233. Some courts have reached the opposite result in considering the status of the remarried wife of a decedent's deceased son, Id. at 1235, but the sounder rule would appear to be to consider the effect of remarriage without reference to the sex of the surviving spouse. The reported cases in this regard are not uniform, but the majority considers that the remarriage of the surviving spouse before the date of the decedent's death terminates the spousal relationship with decedent's child for purposes of applying inheritance tax exemptions which allow favorable tax treatment of a bequest to the spouse of the decedent's child.

This result is further supported by an examination of the effect of RSA 86:6, II(b). When amended in 1975 to allow for the exemption of bequests to spouses of the decedent's lineal ascendants and lineal descendants, the law for the first time provided tax exemptions to individuals who were outside of the decedent's direct line of succession. The exemption operated in the favor of bequests to a daughter-in-law or a son-in-law, and to a step-mother or a step-father, and so forth. These individuals, who are not otherwise the lineal ascendants or descendants of the decedent and who would not otherwise receive a distribution under the laws of intestate succession (see RSA 561:1), may be considered to have a sufficiently close connection to the decedent's line of succession to justify the tax exemption on the theory that the daughter-in-law or step-parent takes the place of the decedent's deceased child or parent so long as the underlying familial relationship is not altered. However, this policy is not applicable where, for example, a daughter-in-law following her first husband's death remarries and becomes the spouse of another and thereby severs the constructive relationship to the decedent's direct line of succession.

Although authority on this issue is not uniform, I advise that the exemption not be allowed for a remarried surviving spouse of the decedent's child. Bequests to these individuals are subject to the tax imposed by RSA 86:6, I.

Sincerely,



Marc R. Scheer
Assistant Attorney General
Division of Legal Counsel